

Notice of Allowability

Application No.

09/966,511

Applicant(s)

MOSBEY ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to appeal brief filed on 8/20/2004.
2. ☒ The allowed claim(s) is/are 1-61 and 66-70, which are now renumbered to claims 1-67.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 3/12/2002
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 062005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

ELECTION/RESTRICTIONS

Claims 1-52 and 66-70 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 53-61 directed to the process of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Process claims 53-61 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Composition claims 71-74, not directed to the process of making or using the patentable product, will NOT be rejoined.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ann Mueting on June 24, 2005.

Cancel claims 71-74.

REASONS FOR ALLOWANCE

Claims 1-61 and 66-70 are allowed and renumbered to claims 1-66.

The following is an examiner's statement of reasons for allowance:

Claimed invention in claim 1 is directed to a water-in-oil emulsion comprising a vinyl polymer comprising polyethylene oxide containing side chains and alkyl-Y-containing side chains, wherein Y is O or NR, wherein R is H or CH₃, and wherein the alkyl group of the alkyl-Y-containing side chain has at least 4 carbon atoms on average

Art Unit: 1617

in a cyclic, branched - , or straight-chain configuration and optionally includes one or more heteroatoms; an oil phase, and a water phase, wherein the vinyl polymer is insoluble or sparingly soluble in the water phase.

Michael (US 5389676) teaches water-in-oil emulsions comprising amphoteric surfactants, but fails to teach vinyl polymers. Kernstock (US 4552685) teaches amphoteric surfactant solutions thickened by a polymer of an alpha, beta-ethylenically unsaturated carboxylic acid, 1-30 % of a nonionic chain extender of an alpha beta-ethylenically unsaturated monomer, such as ethyl acrylate, and a nonionic vinyl surfactant ester. The polymer is said to provide a balanced viscosity and transparency to an aqueous composition. It is viewed that the combined teachings of the references do not teach, suggest or motivate a skilled artisan to make the claimed composition because the Kernstock polymers are soluble in an aqueous phase to maintain the clarity of the composition, whereas the claimed invention requires the vinyl polymers that are insoluble or sparingly soluble in the water phase. The Kernstock reference specifically teaches that its polymer is operative as a water-soluble surfactant, and that pH should be maintained at least at 5.5, or at a neutral or alkaline pH to maintain sufficient thickening effect without substantially reducing clarity. See col. 1, lines 18 – 24: col. 3, line 18 – col. 4, line 66. Thus it is viewed that there is no motivation to combine the Kernstock vinyl copolymer with the water-in-oil emulsion in the Michael reference to make the applicants' invention. As for claims 66-70, the Kernstock reference does not specifically teach isooctyl acrylate, stearyl methacrylate, and polyethylene oxide methacrylate. Thus, the claims are viewed nonobvious over the prior arts.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER